
**COMMISSION MEETING
WEDNESDAY, OCTOBER 10, 2001
MINUTES**

Chair Orr called the meeting to order at 1:30 p.m., at the West Coast Ridpath Hotel in Spokane and welcomed the attendees. He introduced the following attendees:

MEMBERS PRESENT:

**COMMISSIONER GEORGE ORR, CHAIR;
COMMISSIONER CURTIS LUDWIG, VICE CHAIR;
COMMISSIONER LIZ McLAUGHLIN;
COMMISSIONER MARSHALL FORREST;
COMMISSIONER ALAN PARKER;
SENATOR SHIRLEY WINSLEY; and
REPRESENTATIVE ALEX WOOD**

OTHERS PRESENT:

**RICK DAY, Director;
ROBERT BERG, Deputy Director, Operations;
ED FLEISHER, Deputy Director, Policy & Government Affairs;
CALLY CASS-HEALY, Assistant Director, Field Operations;
DERRY FRIES, Assistant Director, Licensing Operations;
AMY PATJENS, Manager, Communications & Legal Dept.;
JERRY ACKERMAN, Assistant Attorney General; and
SHIRLEY CORBETT, Executive Assistant**

1. DIRECTOR'S REPORT and REVIEW OF AGENDA:

Rick Day, Director, advised that he would be incorporating a brief Director's report in order to inform the Commissioners about issues going on within the agency and other miscellaneous facts that might be of interest to the Commission. He provided updates on the following:

Firearms Policy:

At the January Commission meeting, staff will provide a report and presentation that will include statutory authority and policy, liability exposure if agents are armed or are not armed, information on the firearms policy in other states and comparable agencies within the state, the cost of equipment and training, and a timeline on how the agency got where it is with the current policy regarding firearms. The initial research reveals that our agents have been carrying firearms in some fashion since 1973. Director Day affirmed there is historical information detailing how the current policies originated. Data will be shared on agent incidents and concerns they might have. The companion issue about ballistic vests will also be addressed. Director Day acknowledged that a firearms policy in a law enforcement/regulatory agency is very important, and he affirmed that it's very likely staff will choose to make a recommendation to the Commission for their consideration. **Chair Orr** affirmed the agency's agents need the ability to enforce the codes -- especially if they may be altering a person's lifestyle by taking away a license in an establishment, particularly late at night, where there may be alcohol involved, and emotions may run.

The Multi-State Gambling Survey:

Director Day announced that Ms. Patjens' staff is conducting a multi-state gambling survey. He referred the Commissioners to a copy of the questionnaire and advised there are 14 states included in the survey. He urged the Commissioners to review the proposed survey, and if they had additional questions they wanted incorporated, to contact Ms. Patjens or Ms. Corbett. The survey report will be presented at the November meeting.

Agency Conference:

A two-day agency conference with 161 staff attending was held in Olympia on September 26th and 27th. **Director Day** provided a brief presentation that had been given at the agency conference which gave the audience an opportunity to reflect back on a quote from the Governor who said, "It is time to unite as a community, as a state, as a nation to honor the memory of the victims and to express our heartfelt condolences and unwavering support." Director Day asked that

everyone pause for a moment of silence.

The agency's mission, vision and goals were revisited, and unique team building exercises were conducted. **Director Day** highlighted the agency's enforcement and regulatory approach, and the agency's leadership style. Employees were recognized for outstanding performance: the Employee of the Year Award was given to Cathy Harvey of the Tribal Gaming Unit, Neal Nunamaker received the Rock Award, Twania Hogue the Lifesaver Award, Kathy Williams the Energizer Award, and two Rookie of the Year Awards were awarded, one to Sean Moore from Information Services, and to Travis Vessey from Field Operations. Staff also raised over \$1,000 for the state employee's Combined Fund Drive to contribute to the New York relief efforts.

Director Day brought the Commissioners up to date on his activities thus far. He has met with all five commissioners in their home locations, the Governor and his chief legal counsel, and Representative Wood. He has met personally with the entire executive staff and seven of the ten program managers in the agency. He has met with Jerry Ackerman, the agency's Attorney General, Gary Hanson of the Council on Problem Gambling, and with Mr. Tull of the RGA. Director Day advised that he has scheduled a meeting with representatives of the RGA, and that he hoped to meet with the remainder of the ex officio members, the charitable and civic representatives, to meet with the tribal chairs around the state, and to finish his one-on-one meetings with the balance of the agency staff by the end of this year.

Special Agent **Mark Richart**, a new employee from the Kennewick area, who was participating in the commission meeting as a part of the agency's partnership program was introduced.

Agenda Review:

Amy Patjens, Manager, Communications & Legal Department, reported that there were no changes to the published agenda. Thursday's agenda contains three different sets of rules for discussion. One deals with alternative drawings for raffles and discount schemes; the other deals with when a house-banked card room has closed for a certain period of time and is reopening, and the last set of rules were filed after the last Commission meeting dealing with an increase in license fees.

2. NEW LICENSES, CHANGES, AND TRIBAL CERTIFICATIONS:

Commissioner McLaughlin made a motion seconded by **Commissioner Forrest** to approve the new licenses, changes and tribal certifications listed on pages 1 through 16 of the agenda packet under License Approvals. *Vote taken; the motion carried with four aye votes.*

3. GROUP IV QUALIFICATION REVIEWS:

Spokane Youth Sports Association, Spokane:

Monty Harmon, Program Manager, Financial Investigations Unit, clarified that the period being reviewed was when the net return rule was in force. As of April 1st, a new cash flow rule was passed; therefore, no administrative actions are being taken against organizations that had difficulties meeting the net return percentage requirements, those have been discontinued and staff will evaluate cash flow. He indicated that some of the organizations that will come before the Commission have figures that might indicate a problem or difficulty in meeting the percentages, but those are no longer being enforced as of April 1.

Spokane Youth Sports Association was formed in 1966. Its mission is to instill in the youth of the Greater Spokane Area good sportsmanship and ideals of good citizenship. They have been licensed since 1985 and are governed by a board of 20 active members. This organization provides sports programs including baseball, football, golf, soccer, softball and skiing to the Spokane Area children ages 6 to 18. This year's highlights include the purchase and cleanup of land to be developed into the Andrew Rypien Field Project. For fiscal year ending December 31, 2000, the organization met its program service requirements and did not have excessive reserves. At present, there are no pending administrative charges against the organization. Based on staff's analysis of the financial statements, narrative and supplemental information provided with their application, the organization made progress toward accomplishing its stated purposes. The Spokane Youth Sports Association is qualified as a bona fide nonprofit organization for purposes of conducting authorized gambling activities.

Kevin Wagner, General Manager, introduced his Board Members and Executive Director Von Graf.

Commissioner McLaughlin read from the page, "deficiency of revenues over expenses" and addressed the \$128,000 figure. **Mr. Graf** affirmed it related to the development of the Andrew Rypien Field. **Mr. Graf** noted they serve over 17,000 kids in the sports programs and provide \$40,000 in financial assistance. He explained that the Andrew Rypien Field is in an area called Hillyard, which is characterized as an economically disadvantaged area with high unemployment and a high ratio of single-family houses. **Chair Orr** affirmed Hillyard is one of the lowest income areas in the community and East Sprague is one of the lowest income areas and he acknowledged the hard work accomplished by the Spokane Youth Sports Association.

Senator Winsley asked about the sources of their non-gambling revenues. **Mr. Graf** explained they are golf tournament registration fees for the kids. They continue to look at other sources of revenues because the Bingo revenues have decreased over the years. Fundraising is one of the other sources they are considering. Senator Winsley noted that one of their higher contributions was to the Faith Bible Foreign Mission and she found it unusual for a local entity to be giving \$25 and \$50 to local things and giving \$1,000 to an out of the area mission. **Representative Wood** commented that Hillyard is part of the district he represents, and in fact the positive change in that part of the neighborhood is because of what Spokane Youth has done over the last couple of years. He complimented their hard work and results. He noticed that the organization does not have written guidelines on personnel issues, hiring and firing, salary increases and employment benefits. He asked if at some point that that might be a worthy issue to put down in writing. **Mr. Wagner** affirmed they are currently looking at their bylaws and will be making structural changes.

Commissioner Ludwig made a motion seconded by Commissioner Forrest to approve Spokane Youth Sports Association located in Spokane as a charitable organization and that they be authorized to conduct gambling activities in the state of Washington.

Mr. Parker said that according to the financial summary that had been presented to them, they show a net gambling income of \$253,734 for the year ended December 31, 2000. He asked how much of that is going toward the public services of the Youth Sports Association? **Mr. Graf** responded that everything they generate goes to the association for the funding of all of the programs from administrative to maintenance. **Mr. Parker** noted that when they look at some of the other organizations, their percentage of prize payout is 69.9 percent, which compares very well with some of the other organizations they are looking at. **Mr. Graf** said it was unfortunate that they were looking at old data. Currently, their net for the first nine months of this year is one-half of what it totaled last year. Their percentage of payout is high right now. The newly opened tribal facility in Airway Heights, which has a variety of different machines, has made a serious impact on the number of people participating in their sessions. Ten years ago they averaged about 200 people per session, right now, the average attendance is 104 people per session. **Chair Orr** acknowledged that everyone in the Inland Empire, including Coeur d'Alene, has been impacted. **Mr. Graf** affirmed and noted that the tribes also provide community service with their gaming revenue, but, they just happen to be able to have better ways of doing it.

There were no further comments, **Chair Orr** called for a vote. *Vote taken; Motion passed with five aye votes.*

YWCA of Yakima:

Monty Harmon, Program Manager, Financial Investigations Unit, reported this organization was formed in 1909. The mission of the YWCA of Yakima is to ensure a strong, vital force in the community that is representative to the needs of the women and their families. Licensed since 1974, the organization has 670 active members and 19 board members. During 2000, the organization provided numerous programs including providing low income individuals access to a legal systems, preventing family home violence, providing women access to health care, education and support and educating the community about YWCA's programs, creating partnerships with the community, and sponsoring annual events. For the fiscal year ending December 31, 2000, the organization met its program service requirements and did not have excessive reserves. There are no pending administrative actions against the organization. Based on the analysis of the financial statements, narrative and supplemental information provided with their application, the organization made progress toward accomplishing its stated purposes. The YWCA of Yakima is qualified as a bona fide nonprofit organization for the purposes of conducting authorized gambling activities. Staff recommends the YWCA of Yakima be approved as a charitable organization and be authorized to conduct gambling activities in the state of Washington. He called attention to Attachment A noting the organization tapped into their reserves last year in order to cover their expenses while maintaining the programs for the community. He introduced Bingo Manager Carole Choate. **Mr.**

Harmon explained that FIU staff would be working with the organization on how much they allocate to the Bingo operation. He further explained they made an administrative decision to allocate more expenses from their office, and that resulted in a hit in Ms. Choate's program. **Ms. Choate** noted that to date, their concession is at a \$15,000 profit for 2001, and they've worked very hard to cut expenses.

Commissioner Ludwig pointed out that they made almost \$600,000 in non-gambling revenues. **Ms. Choate** explained that was from local donations and state and federal grants. Commissioner Ludwig asked if they would have been better off closing the Bingo hall. Ms. Choate said that if the CPA's had not been as creative as they were, there would have been money left from the Bingo activities. **Chair Orr** said he noticed that all the paid positions are minor and he complimented them on that.

Commissioner McLaughlin made a motion seconded by Commissioner Forrest to approve the YWCA of Yakima as a charitable organization and that they be authorized to conduct gambling activities in the state of Washington. Vote taken; motion passed with five aye votes.

Yakima Valley Opportunities Industrialization Center (O.I.C.):

Monty Harmon, Program Manager, Financial Investigations Unit, reported this organization was formed in 1971. Its mission is to provide educational programs, teach job training skills to at-risk individuals, weatherize housing for low-income households, and administer energy and food assistance programs. Licensed since 1984, they have a board of 16 active members governing the organization. During 2000, the organization served over 124,000 individuals and households through programs which include construction of low cost low income housing, educational and training programs, emergency food assistance and support for juvenile justice prevention and intervention. For the fiscal year ending December 31, 2000, the organization met its program service requirements and did not have excessive reserves. At present there are no pending administrative charges against the organization. Based on the analysis of the financial statements, narrative and supplemental information provided with their application, the organization made progress toward accomplishing its stated purpose. The YWCA of Yakima is qualified as a bona fide nonprofit organization for the purposes of conducting authorized gambling activities. Staff recommends the YWCA of Yakima be approved as a charitable organization and be authorized to conduct gambling activities in the state of Washington. Mr. Harmon pointed out there is a highly competitive market in Yakima. There are four Bingo halls competing for the Bingo dollars and since the introduction of tribal casinos, they have been struggling to maintain their customers.

Mr. Beauchamp, Executive Director, reported that his organization had made some progress since the Wenatchee meeting. **Commissioner McLaughlin** pointed out that they had a lot of red ink last time and they are still almost \$33,000 in the red. She asked why they keep operating. **Commissioner Ludwig** said the punchboard activities made some profit, but the Bingo operation is falling apart. He pointed out that their operation is a very successful operation overall because they've achieved almost \$9.5 million in non-gambling revenue. He suspected that is because of Mr. Beauchamp's efforts in being a fundraiser. Mr. Beauchamp responded that quite a bit of the revenue is in the form of government grants. **Commissioner Ludwig** asked why he was wasting time on a marginal Bingo operation that is taking away from the \$9.5 million? Mr. Beauchamp disagreed and said that in reality, the grants they receive are for specific purposes and cannot be diverted to use in other areas. They run a school and they must use the proceeds they get from Bingo to help them in their school operations.

Commissioner McLaughlin asked how they would make up the \$33,000 deficit? **Mr. Beauchamp** suggested through rental income from some properties they own. **Commissioner Forrest** commented that there isn't much purpose in conducting Bingo if it's costing the organization money. Mr. Beauchamp said that Bingo has made a significant turnaround since their last appearance before the Commission.

Mulu Beyene, Finance Director for the Yakima Valley OIC asked the Commissioners to look at the overall picture -- they made a net profit of \$78,000 last calendar year. **Mr. Fleisher** reminded everyone that under the old net return as well as under the new cash flow measurements, the rule takes into account everything that occurs in the Bingo hall, and it's really the net of all or any other sales figure. Staff must look at that whole measurement of whether they met the standard. The idea, when the new rules were adopted, was to look at all the business that occurs within the walls of the Bingo hall regardless of whether its Bingo, pull tabs, punchboards or food.

Commissioner Ludwig said that although Mr. Beauchamp's organization is doing great work, if someone operates Bingo at a \$32,000 loss, they are taking customers away from another Bingo operation, who may still be struggling, but may be making a little profit, and that bothered him. Commissioner Ludwig said he understands that Bingo operations statewide have been on a downslide and he agrees with his colleagues who are sympathetic and always looking for ways to help the nonprofits and charitable Bingo operations. He reaffirmed that he still worries when an organization is losing money.

Senator Winsley noted the O.I.C. gave a big contribution to a foreign Bible mission and she didn't see where they are giving money to organizations within their own community. **Senator Winsley** asked the Commission if there was a rule that the organizations were required to give a certain percentage to charity? **Deputy Director Bob Berg** drew the Commission's attention to the expenditure report. The indirect contributions in these reports reflect financial payments to other charities, non-profits and individuals outside of the stated charitable purpose of the organization. They are listed as direct services and are in fact the expenditures that the organization has which are related to the purpose for which that organization is formed. Responding to the question regarding the rule, **Mr. Berg** explained the organization is not required to make any indirect contributions. They are just required to disclose them. The measurements are the direct expenditures which are for the purpose for which the organization exists -- and that gets to the point of whether they're qualified by putting more than 60 percent of their proceeds back to their organization. He wanted to clarify that the indirect contributions are not required at all but they are required to be disclosed.

Commissioner Ludwig said he has expressed his concerns about the business available for Bingo in Yakima. In view of the good work and the \$8.5 million spent on direct charitable purposes, he made the following motion.

Commissioner Ludwig made a motion seconded by Commissioner Forrest to approve the Yakima Valley O.I.C. as a charitable organization, and that they be authorized to conduct gambling activities in the state of Washington. Vote taken; motion passed with four aye votes. (Commissioner McLaughlin stepped out of the meeting just prior to the vote)

4. GROUP V QUALIFICATION REVIEWS:

Big Brothers/Big Sisters of Spokane County:

Monty Harmon, Program Manager, Financial Investigations Unit, reported this organization was formed in 1965. Their mission is to provide guidance, aid, and companionship to children from single-parent homes. Licensed since 1976, the organization has 700 active members. They have 29 board members who conducted 10 meetings during the last fiscal year. During 2000, the organization provided numerous program services. One is their volunteer one-on-one child development program, which ended in the year 2000 with 242 matches. They also had the school-based mentoring program, and served 294 children during the year. For the fiscal year ending December 31, 2000, the organization met its program service requirements and did not have excessive reserves. At present there are no pending administrative charges against the organization.

Based on staff's analysis of the financial statements, narrative and supplemental information provided with their application, the organization made progress toward accomplishing its stated purposes. Big Brothers/Big Sisters of Spokane County is qualified as a bona fide nonprofit organization for purposes of conducting authorized gambling activities. Staff recommends Big Brother/Big Sisters of Spokane County be approved as a charitable organization and be authorized to conduct gambling activities in the state of Washington.

Don Kaufman, General Managing Director, introduced some key personnel from his organization. **Commissioner Ludwig** noticed that the organization made almost \$300,000 in Bingo profit and \$3,000 in punchboard/pull-tab for the year 2000. **Mr. Kaufman** said they try to do their allocations based on either square footage or dollars spent in gambling area. In other words, if a dollar comes into their facility, how much of that is going to the kitchen, how much to pull-tabs and how much is going to Bingo. Then they reallocate all their costs accordingly. He felt they might see the figures get even worse because of the opening of the casino. They have been losing crowds in the last 10 years, but this is the first year they have seen a difference in the buy being spent. Mr. Kaufman acknowledged that his Bingo buy is pretty flat, it may be up a few cents compared to last year, but their pull-tab buy is off almost \$2.00 a head. Mr. Kaufman reminded the commissioners that his organization had a decent profit. In 1992, their profit from Bingo operations was \$690,000 and it was \$279,000 last year. That's \$400,000 that his board had to work very hard to replace

and at the same time, they've managed to double the number of kids being served.

Commissioner Ludwig said that although it is not the Commission's decision regarding the days of the week they operate and whether they share facilities or not, would his organization like to be operating more than three days week? **Mr. Kaufman** said yes, however, unfortunately, in a small community like Spokane, it would impact a number of good nonprofits if they all try to add days.

Commissioner Ludwig made a motion seconded by **Commissioner Forrest** to approve Big Brothers/Big Sisters of Spokane County as a charitable organization and that they be authorized to conduct gambling activities in the state of Washington. Vote taken; motion passed with four aye votes. (Commissioner McLaughlin was absent)

5. **PHASE II REVIEWS:**

Cleopatra's Inc., d/b/a/ Cleopatra's Wild Goose Casino, Ellensburg:

Bill McGregor, Special Agent, reported this is a commercial restaurant, lounge and card room located in Ellensburg. The organization is owned by Cleopatra's Gaming Management, LLC, which is 100 percent owned by Eric Nelson, President. The corporation owns and operates three other casinos in Washington State: Cleopatra's Cable Bridge Casino, Cleopatra's Club Casino which are both located in Kennewick, and Cleopatra's Wild Grizzly Casino in Kelso. Cleopatra's Wild Goose Casino began conducting house-banked activities on April 13, 200. They are currently licensed for 10 tables, but only operate 9 tables: 4 Blackjack tables, 2 Spanish 21 tables, 1 Progressive Blackjack tables, 1 Lucky Ladies, and one Progressive Caribbean Stud table.

Staff conducted a comprehensive investigation including a review and observation of key operating departments. The review team compared actual operating procedures to those documented in the card room rules. The licensee's written internal controls were also compared to the card room rules to ensure compliance and consistency. The review of operating procedures was conducted for the five key operating departments. A review was also conducted of the organization's gambling and organizational records to ensure record keeping compliance and that no hidden ownership or unreported third-party financing existed. The city of Ellensburg was also contacted to verify the licensee is current on local gambling taxes. The Ellensburg Police Department was contacted and verified that there has been no adverse impacts of the card room in the community. All violations noted during the Phase II review were verified as corrected during a follow-up inspection. Based on the review, staff recommends that Cleopatra's Wild Goose Casino be approved to operate at Phase II wagering limits. Agent McGregor introduced Jack Newton, Director of Gaming for Washington State. (Commissioner McLaughlin returned to the meeting)

Commissioner Forrest said he was surprised at the number of violations and the fairly substantial failures to comply, especially since they run the other facilities so well and meet all the rules. He asked why they're having so much trouble complying with the rules to move up to Phase II? **Mr. Newton** said they were brand new in Washington State.

Commissioner Ludwig asked if the casinos in Mississippi were traditional casinos or just card rooms. **Mr. Newton** said they were traditional casinos with slots and the full table games—Craps, Roulette, and so forth. Commissioner Ludwig noted they've made quite a venture into Washington State and asked if a fifth site was on the drawing board? **Mr. Newton** affirmed. Commissioner Ludwig asked if the one facility operating at Phase II wagering limits was a profitable operation. **Mr. Newton** said that at the moment, it is, and the other two that are going into Phase II are at the breakeven point. They are hoping the Phase II takes them over the edge there.

Commissioner McLaughlin asked why someone coming from states that have full casino gambling, come into Washington. **Mr. Newton** said this is a beautiful state with a wonderful opportunity -- if the casino is run properly, and if they have the proper staff, they can make money. He complimented Special Agent Leanne Leroux in Kennewick and Special Agent Brian Lane in Ellensburg for being extremely helpful in addressing the problems and issues. They felt they are now completely on board and are running their operations completely, efficiently, effectively and with integrity.

Commissioner Ludwig made a motion seconded by **Commissioner Forrest** to approve Cleopatra's Wild Goose Casino located in Ellensburg to operate at Phase II wagering limits. Vote taken; motion passed with five aye votes.

Cleopatra's Inc., d/b/a/ Cleopatra's Club Casino, Kennewick:

Bill McGregor, Special Agent, said this organization is a commercial restaurant and lounge and card room located in Kennewick. The operation is owned by Cleopatra Gaming Management, LLC, which is owned 100 percent by Erick Nelson, President. The corporation owns three other casinos. This organization began conducting house-banked activities on April 13, 2001. The casino is licensed for 8 house-banked tables: one Blackjack, 2 Spanish 21, one Progressive Blackjack, one Lucky Ladies, one Let It Ride, one Match the Dealer, and one Caribbean Stud.

Staff conducted a comprehensive investigation including a review and observation of key operating departments. The review team compared actual operating procedures to those documented in the card room rules. The licensee's written internal controls were also compared to the card room rules to ensure compliance and consistency. The review of operating procedures was conducted from five key operating departments. A review was also conducted of the organization's gambling organizational records to ensure record-keeping compliance and that no hidden ownership or unreported third party financing existed. The city of Kennewick was contacted to make sure the gambling taxes were current and the Kennewick Police Department was contacted to verify there had been no adverse impacts from the card room on the community. All violations noted during the review were verified as corrected during follow-up inspections and staff recommends that Cleopatra's Club Casino be approved for Phase II wagering limits effective October 13, 2001.

Agent McGregor addressed the violations and noted they have been corrected. He explained that was why there is a six-month operation before being allowed to go to the higher Phase II limits -- to make sure those types of violations are corrected before they go to the higher levels.

Commissioner McLaughlin asked if these Cleopatra's were part of a corporation that has the Cleopatra Casinos in Nevada. **Mr. Newton** responded in the negative.

Commissioner Ludwig made a motion seconded by **Commissioner Forrest** to approve Cleopatra's Club Casino located in Kennewick to operate at Phase II wagering limits. *Vote taken; motion passed with five aye votes.*

Chair Orr called for a break 3:00 p.m. and recalled the meeting at 3:45 p.m.

6. DEMONSTRATION OF "PROMOTIONAL" DEVICES:

Bob Berg, Deputy Director, announced that the reason this comes before the Commission is that in RCW 9.46, the new promotional contests of chance statute talks about any machine that unless authorized by the Commission, equipment or devices made for use in gambling activity are prohibited from use in promotional contests. Because of the questions surrounding some of these machines, staff has spent time looking at these machines, having them demonstrated and believed it was a good idea to bring this machine before the Commission so that they could see how it operates and also give the vendors an opportunity to talk about what their machine does. Subsequent to the September Commission meeting, the first machine proponent, Blue Diamond Enterprises, came back to the Gambling Commission with some substantial changes to their machine, which took it off the marginal or possibly not authorized use from a staff perspective. The changes made the Blue Diamond machine function merely as a reader of a card. There is one machine here today from World of Games, and the vendors will be sharing some preliminary information and some operational issues

Mr. Berg continued that in discussions with the agency's assistant attorney general, there have been some statements made that some legal issues may result from this, and it is possible that depending upon decisions made or not made, that this matter could end up in litigation. He said there might be some discussions that should occur in executive session.

Mr. Tony Hughes, Special Agent, Amusement Games Gambling Device Coordinator, pointed to the device that is being presented for a proposed promotional contest of chance. The applicable statute RCW 9.46.0356, specifically §§6 states, "unless authorized by permission, equipment or devices made for use in the a gambling activity are prohibited from use in a promotional contest." The issue before the Commission today is whether this device a gambling device or not. If it is decided it is a gambling device, the Commission has authority to allow it or not to allow it to be used in a promotional contest. Agency staff received a lot of feedback regarding these types of devices from commercial amusement game operators who have concerns. They have expressed that their industry is highly competitive and with the introduction of this type of device, they're going to be forced to introduce similar types of devices in order to compete. Pull-tab distributors have also stated that these types of devices have been marketed as an alternative to pull-tabs and licensees

have asked the general legal question pertaining to if they install such a machine, are they in jeopardy of losing their gambling license? He noted there are a lot of people waiting for a decision. Mr. Hughes introduced the presenters: John Woodring, their attorney, Keith Heflin, President and CEO of World of Games, and two distributors, Jody Curley of Outback Entertainment and Dave Winfrey of ACE Games.

John Woodring, Attorney, said the presenters appreciate the opportunity to make this presentation and appreciated staff working with them on this particular issue. He said he is the attorney for the two companies, Outback Entertainment and Bullseye Amusement, who are the distributors for the equipment being demonstrated. They call this the spin-free vending machine. He said Mr. Heflin would spend time talking to the Commission about describing the vending machine and how it relates to the promotional games of chance statutes.

Mr. Woodring asked permission to introduce into the record several documents because there may very well be a decision from the Commission regarding this particular vending machine. As such, he would interpret that subject to the Administrative Procedure Act, and potentially an order, and he has the responsibility on behalf of his clients to make a record under those circumstances. He introduced a list of 15 exhibits. He handed out copies of the exhibits in the list and stated he would provide them to the Commission if appropriate. **Commissioner Forrest** suggested they file one copy and if additional copies are necessary, they can be requested.

Mr. Woodring then introduced the following:

- An opinion from Spokane Attorney Brian McGann, of the law firm of Winston Cachatt. A piece of correspondence dated October 9, 2001 addressed to Mr. Ed Fleisher, of the Washington State Gambling Commission, that is in effect an opinion to the Hillyard VFW Post 1474 regarding this particular vending machine.
- The U.S. patent for this particular vending machine.
- He requested that all documents that have previously been submitted to the Gambling Commission with regard to this machine either from his clients from World of Games LLC or from any other source be made a part of the record.
- He requested that any documents not heretofore mentioned, alluded to, or referred to as indicated by Mr. Heflin, that they have the ability to also introduce those into the record.

Mr. Woodring said that he wished to state at the outset that it's the position of his clients that this free-spin vending machine is not a piece of equipment or a device made for use in a gambling activity and that's the standard under the promotional game statute they are discussing. His clients draw a difference between a legal gambling device and the standard in the statute. They are different and the Legislature, they believe, was aware of that difference and the standard was made for use in a gambling activity. Further, if it were a piece of equipment or device made for use in a gambling activity, it should be authorized under the statute as a promotional contest of chance that's defined in that statute. The reasons are as follows: the free-spin vending machine is a patented vending machine. It dispenses collectibles, cards, sports cards and other types of cards for consideration. That's the purpose of this machine. The customer receives a valuable product for the money that they put into the machine and that's a collectible card in exchange for each payment of money they put into the machine. In his clients' opinion this does not constitute gambling as defined under Washington statutes. There is no staking or risking something of value upon the outcome of a contest of chance. That's not what this machine is about. This machine is about purchasing a collectible card.

The video game that is played by the customer on the machine is a promotional game of chance as defined under the promotional game of chance statute. It is played to promote the merchandise, which is the sale of the collectible card. In addition to that, the customer can choose the method of consideration, obtain the card, and not play the promotional game. That's always at the election of the customer. No consideration is required in order to participate with promotional contests. The consideration again just pays for the flexible card. The operators of the machine provide a no-purchase-necessary alternative to participate and these include mail-in forms, toll-free telephone numbers and onsite entries, which is a requirement of the statute for promotional games of chance.

He noted that the Commission in March (2001) discussed a rule to deal with these types of games. At that time, the Commission made an election not to promulgate a rule in regard to the game. Exhibit No. 9 in the list of exhibits given to the Commission is a transcript to what they think is relevant from the Commission meeting and relevant consideration dialogue in regard to why the Commission withdrew that rule. **Mr. Woodring** said his clients would like the Commission to take that under consideration -- they believe the issues that were presented in that discussion are also

relevant here on how one should regulate this game, for this vending machine, if at all.

Commissioner Ludwig read on page 15 on how to play for free: “Simply fill out a promotional play voucher located on each machine or call 1-800-762-0015 requesting a free entry.” He asked if they received very many of those calls? **Mr. Woodring** said Mr. Heflin would discuss this issue and would tell the Commission how many states they’re in. He believed they do get approximately 8,000 to 15,000 calls per year. Commissioner Ludwig marveled that they would go to that much trouble just to get a free play on that machine. He asked how many vouchers one person can get.

Keith Heflin, CEO, World of Games, LLC, patent holder of the vending machine, responded that the company receives between 8,000 to 14,000 free entries a month—not a year. He said there is not a lot of difference between paying and free entry. The two methods of entry that he referred to at the time of the printing of the book were the two that were the standard. The standard of the sweepstakes industry is just to be required to give an address that the person wanting to participate in the contest can mail a self-addressed, stamped envelope and make a request for a free entry. They included the 800 number to address this issue. A lot of the written entries will go directly to one of their distributors. The 800 number could be used should the pre-entry forms become depleted. They wanted a redundant system that would allow someone to be able to call and get the free entry. Currently, they have implemented a change in the rules -- the rules the commissioners are reading were developed for Tennessee. Washington rules would be somewhat different. Mr. Heflin affirmed there are different qualifications in some states. Instantaneous entry is available at any location. Someone can walk up to the machine, fill out a form, carry it to the attendant, and they will access a key, turn the machine on and the player gets the same promotional points.

Mr. Fleisher asked about the percentages on free play versus pay to play. **Mr. Heflin** responded he hasn't calculated a percentage number, but it would probably be about one percent or less. **Commissioner Ludwig** noted the voucher doesn't let one get a card. Mr. Heflin affirmed this is just a free spin. Commissioner Ludwig indicated that one has to go through a lot of steps just to get that free spin. Mr. Heflin affirmed that in Washington State it would be implemented -- all the player has to do is ask at the counter and then sign a form and turn it in. This correlates with a meter that's located in the machine to track free entries to ensure they are being monitored, and so they can keep up with them. Then they simply turn the key on the front of the machine. However, like any contest free entries are limited -- this one is limited to one per person, per location per day. Commissioner Ludwig inquired what a lucky spin winner would win? Mr. Heflin responded, cash up to \$599.00 on the spot.

Commissioner McLaughlin verified the free spin is not gambling. **Mr. Heflin** affirmed, if one is not required to spend consideration -- if one plays for free they are able to win a promotional advertisement. Mr. Heflin then demonstrated the two methods of free entry and physically operated the machine.

Mr. Heflin inserted a dollar and a collector's card was delivered, the card was dispensed and promotional points awarded. At this point, the player could just pocket the card and leave. The player gets the opportunity for a free spin but it's up to them whether or not to take it. There are actually 20 promotional points that have no cash value whatsoever and if someone walked away, the points would be left for somebody else. The contest is governed by a set of official rules. Those rules are basically a contract between the contest sponsors.

Commissioner Ludwig inquired whether his 14-year-old grandson could walk up and buy a card out of the machine? **Mr. Heflin** said absolutely not because it's age-restricted. Commissioner Ludwig inquired why -- if you're just selling

baseball cards or collector's cards, why couldn't a 14-year-old buy one? **Mr. Heflin** reiterated a minor couldn't enter into the contest, that this is a stand-alone contest.

Mr. Heflin addressed the second method of entry, completing the form; once presented at the location and signed according to the rules, the player can redeem it, and a key is inserted into the front of the machine and rotated into promotional play position. At that point, the player can enter the contest. The points never obtain cash value but they can be converted when a three-part form is completed. The front copy is kept at the location; the second copy goes to the distributor to conform to whatever metering system is in the machine; and the back copy is given to the participant as notification of winning a prize. **Chair Orr** verified that if he fills out the form, he simply gets a free spin, and not a baseball card. Mr. Heflin affirmed, the ball cards are sold. **Jerry Ackerman**, Assistant Attorney General asked where the money comes from when someone sends in the forms? Mr. Heflin responded that it's paid on the spot up to \$599.

Anything over that has to be verified for 1099 purposes and the social security number has to be taken. Mr. Heflin again noted that individual states, depending on their regulations, could limit the winnings not to exceed \$500 or whatever amount desirable. It simply has to be disclosed in the rules of the contest. Mr. Ackerman verified that one could win more than \$599, but that it would not be paid on the spot? Mr. Heflin affirmed it would be subject to verification. Some states allow paying on the spot after the information has been taken. He reported that they have expanded into 12 to 14 states and are attempting to develop uniformity in the rules.

Commissioner Ludwig inquired about what kinds of businesses typically purchase the machine. **Mr. Heflin** responded that in Tennessee the machines are in bars, taverns, private clubs or any atmosphere that would sell a sports-related item.

Mr. Fleisher asked that if he had 20 credits, would he get to play 20 times, would he play each credit one at a time and whether he would win or lose would be determined by an electronic random number generator? **Mr. Heflin** affirmed. Mr. Fleisher addressed the option for additional plays based on the purchase of goods and services and thought the intent was that one is buying that product at the normal store price. This is a dollar for one single baseball card, which could be much more than a baseball card would cost at K-Mart. Mr. Heflin affirmed the cost depends on where you go. He reported they are purchased from National Distributors and they are reviewed by a baseball card expert out of California. He felt that they were well within the parameters of what cards sell for -- from 50 cents to \$1 including sales tax. Mr. Fleisher inquired about the price paid for the cards. Mr. Heflin responded that he buys cards in quantities of anywhere from 2 to 4 million at a time, so he gets a huge discount -- he buys cards from anywhere from half cent to three cents apiece. He then sells the cards to distributors at a marked up price. Mr. Fleisher inquired about the profit made on the game itself? A portion of Mr. Heflin's response was inaudible. He explained the way he drives the long-term income is through a transaction fee of a cent or two cents. **Mr. Berg** asked if Mr. Heflin was paid on the number of cards sold or the number of spins of the machine? Mr. Heflin explained that the distributor places the machines -- they sign an area distribution agreement, they pay for the area based on the initial property being the patent or the copyright on the software. Mr. Heflin explained the only profit he makes is from selling the stock for the machines or the distributor. Mr. Berg asked if anyone in the economic chain receives compensation based on the number of spins or plays of promotional contests of chance versus the number of cards sold? Mr. Heflin responded that the income derived from this machine is from the sale of the product and the state derives a sales tax income from the sale of every product, but, there is no compensation paid based on the number of spins recorded on the machine versus the number of cards dispensed from the machine.

Mr. Ackerman asked whether the rules typically have a maximum amount that someone can win? **Mr. Heflin** affirmed. Mr. Ackerman asked if there was a standard amount? Mr. Heflin indicated that if they do (which varies state by state), a maximum amount is \$500. If it runs past that amount, the machine will shut down and the machine then has to be cleared. Mr. Ackerman asked what was the significance of \$599? Mr. Heflin indicated that related to areas where there are no limits. If you pay anyone any income over \$600 you have to have a 1099 form. Tennessee and Virginia do not have limits on the maximum. He reported the most he's ever seen in a lump sum promotional prize was about \$830. The average promotional prize on this machine across the country is \$74. Mr. Ackerman inquired whether the rules then set a payout schedule for each state? Mr. Heflin responded that he wouldn't call it payout schedule. The rules would be written depending on what the state requires. If we get into a targeting program situation, and some states have done that, then the Version 2 of this machine sets a target level similar to "Who Wants to be a Millionaire?" Once you get to 1,000 points, it's a trigger, and then it automatically prints a claim form, which is the player's cutoff, and they can either use an entry if they haven't already used it for that day, or purchase another product. Once the claim form is filled out the distributor will make the payout. Mr. Heflin explained the reason they back it up with an 800 number is in the event the distributor can't be reached; we can at least take the information. **Mr. Ackerman** asked if his company manufactures the machine and all of its components? Mr. Heflin affirmed, and indicated that some components are from sub-suppliers. The board is a modified version of the standard cherry board. The random number generator is a part of the contest board—the motherboard supplied by American Alpha -- a company out of New Jersey. (Commissioner Parker left the meeting at 4:00 p.m.)

Commissioner Ludwig addressed the card price mark up --the handout says a thousand cards at 5 cents apiece, which equals \$50.00. If the cards are being sold at a \$1 apiece, that's a 9,500 percent markup. **Mr. Heflin** affirmed, if that was all profit. However, Washington State sales tax adds about a nickel, then there are distribution fees, the cost of the equipment, insurance, which all comes from the dollar sale. Commissioner Ludwig believed paying a nickel and selling the card for a 95 cent gross profit, before taxes, sounds like consideration. Mr. Heflin responded there is a built in cost

for the contest. If the card is sold for \$1, tax and overhead costs come out, then, depending on the distribution fees, he's looking at 13 to 18 cents to \$1 net. Mr. Heflin affirmed the payout percentage or retention percentage would be 45 percent. **Mr. Fleisher** verified that for every dollar that goes in, 45 cents is retained, 55 cents is returned in the form of prizes for the contest.

Mr. Woodring interrupted and requested permission to address the Commission regarding their legal position. He read the statute and said their position is that the statute controls this activity and paragraph 5(a) says; "as used in this section, consideration means anything of pecuniary value required to be paid to the promoter or sponsor in order to participate in promotional contests." **Commissioner Ludwig** again addressed paying for the cards and markup. He noted that McDonalds typically sells their product for the same amount before the contest as they sold it for after the contest. That's a standard, or probably a legitimate markup. He again emphasized that in this case there is consideration for playing the game -- and that it strikes him as a terrific markup for a sports card that costs a nickel to buy, and sells for \$1.

Commissioner Ludwig asked if Mr. Heflin would agree that there is a difference between accumulating points that you can redeem as opposed to playing this game because it is a game of chance? **Mr. Heflin** affirmed. Commissioner Ludwig noted the legality issue becomes an issue when there is consideration. Mr. Heflin responded that the machine is a game of chance and one is never required to extend consideration to participate.

Mr. Ackerman asked if this is the same machine that the Court in Aida County, Idaho found to be illegal? **Mr. Heflin** responded that it was the model above this machine that had different features to it. Since the ruling, the machine has come into compliance by removing the replay capability. Mr. Ackerman asked if this is also the same machine that the Indiana Court of Appeals found to be illegal in the Eizer Sales versus Thomas Wilson, Prosecuting Attorney case? Mr. Heflin affirmed it was the same model as in Idaho. It would not be the model brought to Washington because it would not have the replay of promotional points capability. Mr. Heflin advised that both cases are under appeal.

Senator Winsley addressed the location and placement of the machines. **Mr. Heflin** explained that it's really up to the distributors to develop where they put the machines. He only puts limitations on the number of machines—2, 4 or 6 machines being placed depending upon the setting.

Mr. Heflin addressed the patent. He noted the machine has been compared to Valley Slot Machines, to Lottery Terminals, Keno machines, and 18 other products to see if they could discover "prior art." Prior art is a prior patent. One of the questions during the comparisons related to the random number generator. The United States Patent Office, after reviewing this, determined it was a unique invention with a purposeful use; that it was novel, and they chose to issue Patent No. 6213874 to Mr. Heflin -- not World of Games. He noted the collector's card industry is a billion dollar a year business and this was his way of tapping into that stream. He emphasized they wanted to comply and conform.

Mr. Woodring reiterated his legal position, noting that RCW 9.46.0356 states that promotional contests of chance under this law are not gambling if they meet certain criteria. He believed the machine demonstrated met here all the elements of not having to take consideration in order to play. Mr. Woodring explained the way he interpreted the statute, the only way the Gambling Commission could get involved in regulating this machine would be if the equipment or device were made for use in gambling activities. Only then could it be prohibited as a promotional contest. He stated that Mr. Heflin's submitted testimony indicates that it has not been manufactured for use in a gambling activity. The patent is for a vending machine for the purpose of dispensing collectible cards and he affirmed Mr. Heflin doesn't have a patent to use the machine for gambling activities. The intent of the business the distributors will be engaged in is to sell collectible cards in a billion dollar industry—this is merely a method of promoting the product. Similar to McDonalds' whose business is to sell pop, French fries and hamburgers, and they use promotional games to promote that business. No further testimony was offered.

7. DEFAULT HEARING – CARD ROOM EMPLOYEE:

Kimberly Ann Griffin, Card Room Employee:

Amy Patjens, Manager, Communications & Legal Department, reported that staff is requesting that an order be entered denying Kimberly Ann Griffin's application for a license based on her criminal history: a 1999 felony conviction for Forgery, a 1998 felony conviction for Possession of a Controlled Substance with Intent to Deliver Methamphetamines, as well as an extensive history of traffic convictions, infractions and related warrants.

She explained that former Director Bishop brought charges against Ms. Griffin and they were sent by certified mail. It appears she did sign the return receipt card showing that she personally received the charges. Staff sent Mr. Griffin a letter and explained to Ms. Griffin that if she did not request a hearing, a default would be entered. Staff then called Ms. Griffin and left a message. The agency did not receive a call back and Ms. Griffin has, therefore, waived her right to a hearing. Staff recommends that the Commission deny Kimberly Griffin's application for a Card Room Employee license.

Commissioner Forrest made a motion seconded by Commissioner McLaughlin to deny Kimberly Griffin's application for a Card Room Employee license. Vote taken; motion passed with three aye votes. (Commissioner Ludwig and Commissioner Parker were absent)

8. DEFAULT HEARING – FAILURE TO SUBMIT QUARTERLY ACTIVITY REPORTS:

Turner's, Everett:

Amy Patjens, Manager, Communications & Legal Department, reported that staff is asking that an order be entered revoking the Class A Pull-tab license of Turners which is a business located in Everett. The licensee failed to submit their Quarterly Activity Reports for their punchboard/pull tab activity within 30 days following the quarters ending March 2001 and June 2001. Staff did not receive the reports after repeated phone calls and letters. The first report is now over five and a half months delinquent and the second report two and a half months delinquent. Former Director Bishop brought charges against the establishment and they were sent by Certified Mail Return Receipt Request and also by regular mail. An attempt was made to contact the owner and staff received no response. Staff recommends that the Commission revoke Turners' license to conduct gambling activities.

Commissioner Forrest made a motion seconded by Commissioner McLaughlin to revoke Turners' license to conduct gambling activities. Vote taken; motion passed with four aye votes. (Commissioner Parker was absent)

9. OTHER BUSINESS/GENERAL DISCUSSION/COMMENTS FROM THE PUBLIC:

Chair Orr called for comments and there were none.

10. EXECUTIVE SESSION TO DISCUSS PENDING INVESTIGATIONS, TRIBAL NEGOTIATIONS & LITIGATION:

Chair Orr called for an Executive Session at 4:45 p.m. and recalled the public meeting at 5:35 p.m.

11. ADJOURNMENT:

At 5:35 p.m., Chair Orr adjourned the meeting until 9:30 a.m., October 11, 2001.

**COMMISSION MEETING
THURSDAY, OCTOBER 11, 2001
MINUTES**

Chair Orr called the meeting to order at 9:30 a.m., at the West Coast Ridpath Hotel in Spokane. The following attendees were present:

MEMBERS PRESENT:

**COMMISSIONER GEORGE ORR, CHAIR;
COMMISSIONER CURTIS LUDWIG, VICE CHAIR;
COMMISSIONER LIZ McLAUGHLIN;
COMMISSIONER MARSHALL FORREST;
SENATOR SHIRLEY WINSLEY;
SENATOR MARGARITA PRENTICE; and**

OTHERS PRESENT:

**RICK DAY, Director;
ROBERT BERG, Deputy Director, Operations;
ED FLEISHER, Deputy Director, Policy & Government Affairs;
CALLY CASS-HEALY, Assistant Director, Field Operations;
DERRY FRIES, Assistant Director, Licensing Operations;
AMY PATJENS, Manager, Communications & Legal Dept.;
JERRY ACKERMAN, Assistant Attorney General; and
SHIRLEY CORBETT, Executive Assistant**

Chair Orr explained that due to the abundant number of questions that came up during yesterday's "Free Spin" machine presentation, he would provide additional time to the World of Games presenters to complete their demonstration.

Keith Heflin, CEO, World of Games, Shelbyville, Tennessee, said he appreciated the opportunity to follow up. He wanted to make clear that the intent of the design is to promote the sale of his product. He affirmed they had talked a lot about ball cards or sports cards—that's one of the many different products they sell. There was a lot of discussion about price. Had he known price would be discussed, he would have been prepared to give the Commission a broader picture. Had he known they were going to get into a detailed discussion of random number generation in relation to the company's context versus slot machines versus McDonalds, Coke or Pepsi's promotions, he would have brought those experts. What he had hoped to do was give an overview of the machine, give the information to the Commission, and that whatever the Commission felt, within reason, the company could modify the machine to Washington community standards. He said they were here to conform and comply as long as they did not get knocked out of what they feel is their constitutional right, or by being treated differently than any other promotional contest. He encouraged anyone to call any of the numbers he has provided as part of his information packet, or to view the web site.

Senator Winsley asked what World of Games bases the cost to the distributor on. **Mr. Heflin** said it is based on the demographics of the particular county or state, the ability for the potential of distributing their product -- the potential volume of sales of cards or the product being sold. Senator Winsley verified that no two distributors necessarily pay the same price. Mr. Heflin affirmed, stating, not based just on population. Basically, the World of Games' distribution

contract was generated by the company that does contracts for TCBY and Pepsi, so it's their distribution contract based on the parameters they've developed through the years. It gives the company a lot of command and control over their distributors should they fall outside the parameters of the rules the company sets with the operation of the machine, they actually would forfeit their investment, machines, and a right to back to the company. **Senator Winsley** verified that when a distributorship is terminated, if it should be, then that machine returns to the manufacturer? **Mr. Heflin** explained the intellectual property in the machine would return. The cabinet, the monitor—anything that is not intellectual or copyrighted or patented to the company would remain the distributor's property.

Commissioner McLaughlin asked if they were approved, who would be selling distributorships in the state of Washington? **Mr. Heflin** said Jody Curley and Dave Winfrey had approached them for a statewide distribution agreement. They would be the World of Games' Washington State distributor. In doing that, the company is able to ensure through the sub-distributorships that the individuals would have to sign and comply with a command and control over this product. **Mr. Heflin** said he's become more interested in the charitable solicitations machine for use in the Bingo atmosphere. He said he might be back presenting the machine because it could save a lot of the Bingo halls. **Mr. Heflin** then asked Jody Curley from Outback Entertainment and Dave Winfrey from ACE Games to stand up and introduce themselves which they did

Mr. Heflin emphasized this machine would derive a huge asset and sales tax revenue for the state from the sale of each card or each product. **Commissioner Forrest** asked **Mr. Heflin** if anybody had gone beyond anything like the cards he showed them yesterday. **Mr. Heflin** said this particular patent—and there are four continuations on parts on the patent (if you change a part and you get a different patent number or additional patent numbers), this particular patent covers collectibles, and phone cards or basically a flat, pliable object that can be considered a collectible for time issuance. **Mr. Heflin** explained they do not do the phone cards for two reasons: because there's been a lot of bad press over someone who did a mimic of their product, and because it's a volatile market. It's hard to show a comparative price structure for phone time if you sell it for 2 minutes for \$1 or 1 minute for \$2 versus a direct comparative product line or price line for the collectible card industry.

Chair Orr suggested that **Mr. Heflin** contact **Mr. Woodring** and make sure he keeps in contact with staff.

Commissioner Forrest said he thought the Commission needed a month to digest the information before they make any final decision. **Chair Orr** concurred and noted the topic was not an action item on the agenda, and the Commission would digest the information for a month and render a decision next month at their meeting.

1. **MINUTES – September 12, 2001:**

Commissioner Forrest made a motion seconded by **Commissioner McLaughlin** to approve the Regular Meeting Minutes of September 12th, 2001 as presented. *Vote taken; passed with three votes. (Commissioner Ludwig abstained)*

RULES UP FOR DISCUSSION

2. **RAFFLE APPROVALS:**

WAC 230-20-325 and WAC 230-20-335:

Amy Patjens reported these rules are up for discussion; they were filed after the August Commission meeting, and would appear on the agenda for four months. The effective date remains January 1, 2002. The rule allows a nonprofit organization to conduct a discount scheme when they are doing raffles. They can also use an alternative method for the drawing. The rules simply make it so that when a nonprofit organization is going to have the exact same discount scheme or the exact same alternative drawing format as they did the previous year, they can do that again without having to obtain additional approval from staff. This will streamline the process. The other changes made were housekeeping. She noted a change to the second rule after the last Commission meeting, dealing with discount schemes and alternative methods of entry for members only raffles. The rule did not say they needed to get a license even though that's always been the practice. If problems occur with how a members only raffle has been conducted using one of these schemes, and the organization doesn't have a license, the agency can't take any enforcement action. Normally, a nonprofit organization could have a members only raffle if it didn't involve discount schemes, or different methods of drawing and if they stay under a \$5,000 gross receipts level.

Commissioner Forrest asked if state law requires that all tickets be sold for the same price, how do we justify a different price for a package? **Ms. Patjens** said she knows that that discounting system has been around for many, many years, but she did not know the genesis of the discounting system. **Derry Fries**, Assistant Director, recalled language stating the ticket bearing an individual number could be sold for not more than \$25 each. That was the opening for the pricing of discount tickets, however, the rule didn't say that tickets couldn't be sold for \$23 or \$25 or \$1 -- and that was the opening. **Commissioner McLaughlin** thought tickets could be bundled into a discount scheme, but that it couldn't be people outside of the organization selling the tickets. **Ms. Patjens** affirmed bundling is allowed, which is actually separate from the discount schemes. **Senator Winsley** recalled legislation regarding credit unions being allowed to have raffles and asked if organizations such as Rotary, banks, or other businesses could have charity purpose raffles. **Ms. Patjens** said no -- only a nonprofit organization may conduct a raffle. **Ms. Patjens** said credit unions received a special exception under the law to be able to do that because a credit union would typically be a nonprofit type of organization. **Senator Prentice** recalled something for hospitals. **Ms. Patjens** affirmed something was proposed, but she didn't know that the hospital exception passed. **Senator Winsley** addressed the complexity of the rules and questioned how the average citizen could comprehend what applies to whom. **Ms. Patjens** acknowledged the concern and explained the difficulty of having gambling be well regulated, and that it is hard not to have a lot of details in the rules. **Ms. Patjens** affirmed that staff is trying to write rules to a level so that organizations or citizens can figure out what the agency is saying.

Chair Orr asked if anyone else wished to speak to these issues.

Don Kaufman, Big Brothers/Big Sisters, said the discounted promotion is the way to go if one wants to help people increase their volume. If you're asking somebody to spend a dollar, it's one thing; if you ask them to spend \$10, it makes sense to give them a little break and throw in a couple of extra tickets. He noted that staff has an excellent training package, and if someone is going to be licensed for raffles, they have to go through the training. **Mr. Fries** pointed out that the agency provides a brochure on unlicensed raffles, which is available for the public. **Mr. Ackerman** noted that he has been surprised at the number of calls he's had from citizens asking about raffles. Normally what he does is refer them to the Gambling Commission staff, which has a very good customer service ethic, and he never hears from them again. He emphasized that people aren't shy about calling back when he sends them places and they don't get good service.

3. RE-OPENING A HOUSE-BANKED CARD ROOM AFTER CLOSURE:

WAC 230-40-801 and WAC 230-04-207:

Cally Cass-Healy said these rules are up for discussion only today. Item 3a is WAC 230-40-801 -- Interruption of card games, preoperational review and evaluation required. This rule sets forth the requirements licensees must follow to reopen a house-banked card room after temporary closure. It sets forth that if the business is closed for more than seven days, the operator must inform the Commission staff why it is closed and the anticipated reopening date. If closure exceeds 60 days, the licensee shall notify staff of any changes in their operation and a preoperational review must be conducted prior to their reopening.

Item 3b is WAC 230-04-207 -- Additional requirements in house-banked card games. The change in this rule is simply a clarification that a pre-operational review will be conducted prior to being presented to the Commission for approval. It is simply a codification of the Commission's current policy. **Chair Orr** opened the issue for public testimony. There was none. Further discussion will be conducted at the November meeting.

4. LICENSING FEES:

WAC 230-04-202; WAC 230-04-203; WAC 230-04-204; and WAC 230-08-017:

Amy Patjens noted these rules are up for discussion today. The rules were filed after the last Commission meeting when the Commissioners decided to file both alternatives. One alternative would just increase the licensee fees for the commercial operators and the other alternative would increase license fees across the board. The fee increases are consistent with the fiscal growth factor, which is 2.79 percent. The fiscal growth factor was something that was set by initiative 601 several years ago. The agency has not had a fee increase for two years. The majority of agency funding is realized from the commercial operators (about 87 percent). If the fee increases were not made for the nonprofit organizations, the "loss" in revenue between now and the end of the next biennium would be approximately \$80,000.

The rules do also include the reduced fees for the limited fundraising events which were the result of two petitions. The

fees also add a new fee of \$350 per table for businesses that want to use the electronic facsimile of cards systems. Staff recommends further discussion.

Commissioner McLaughlin asked how staff feels about the first alternative. **Ms. Patjens** said this was discussed extensively in the executive team meeting. She recalled that Commissioner Parker had pointed out that even for the very big operations, not increasing the fee might be a difference of \$200 for an organization whose license fee is already \$10,000 and one that is bringing in a million dollars of gross receipts. There are about 40 very big Bingo operators and 40-50 very big pull-tab operators. Discussion was initiated on whether this will really help them or whether it sets a precedent. Ms. Patjens believed more information would be available for the Commission next month. Staff believed that there are probably other things that would be a bigger help for the charitable licensees rather than not increasing their fees. Commissioner McLaughlin asked Ms. Patjens if she thought they should implement the fee across the board. Ms. Patjens indicated that staff appeared to be leaning in that direction.

Director Day responded that the impact on even the smaller licensees might be a dollar or a maximum of \$3. If you look at just one year, it's not a big impact on the agency revenues. However, if you calculate that deduction over a longer period of time, if you don't implement the increase, you lose the opportunity to increase that base. Then it starts to be a bigger and bigger number over time. He affirmed that staff hopes to have more documentation at the next meeting, but staff believes that it would be more consistent and a differentiation between the fees may not actually accomplish the Commission's purpose.

Commissioner Forrest asked if the fees were roughly proportional to the agency effort that goes into the various types of activities, and if that were the case, would the difference in the charitable nonprofits be grossly out of line? He noted we couldn't ever calculate this totally precisely because a licensee could have a lot of problems one year and less problems in another, however, it would still be within the general principal that the fees are roughly proportional to the agency effort. He asked if increasing them all or giving a difference of not having an increase for the charitable nonprofit, if that would violate that general principal? **Ms. Patjens** said it would not because it is so few dollars (a change of \$2 to \$3 is not significant), especially for the bulk of the licensees. **Commissioner Forrest** asked when the proposal regarding other things that would be more helpful would come before the Commission. **Mr. Berg** responded by noting that he and Mr. Fleisher had met with the WCCGA. They looked at a couple of issues regarding use of halls, number of days per week, and things that staff might be able to propose to the Commission that they consider from a policy perspective, but are still within the context of the overall law, as well as what the agency position might be, and in what the Commission's position might be should there be some request to make some changes in the statute to allow some greater opportunities in terms of management issues and single management of multiple operations to cut down overhead costs. He and Deputy Director Fleisher think those kinds of things might provide a greater relief to the industry than tinkering with a bifurcation of fees.

Chair Orr asked how much of the gaming dollar goes to local government fees, state sales tax and etc.; he thought that would be good information to have. **Ms. Patjens** affirmed some of those figures are available in the agency's statistical reports. **Chair Orr** called for public testimony.

Steve Strand, President of the Washington Charitable and Civic Gaming Association, affirmed the significant and good conversation with Mr. Fleisher and Mr. Berg. However, he stated that at this point, the WCCGA's approach to its operation is holistic and not piecemeal, and any part of their expense structure whether it be fees or internal costs are always closely scrutinized. He suggested that it would not be considered negative to set a precedent to be an aid of a charitable organization. In the context for his organization's operation, the total local tax and state license fees approximate to 1/3 of their total annual net profit. They paid just over \$100,000 in state and local taxes and they profited \$296,000 for the year. **Chair Orr** said his concern is that the average citizen may not understand the costs involved to run a Bingo hall. They may not stop to think about the costs of doing business such as paying electricity, rent, salaries, and for desirable prizes. He noted that while local and state governments look at this industry as a source of income, they don't necessarily like the negative influences it may bring to their locale - no one wants them in their neighborhood. **Commissioner Ludwig** asked what percentage of Mr. Strand's organization's net or gross is their license fees? Mr. Strand said the license fees ratio to his net profit would be about 10 percent. **Commissioner McLaughlin** asked him his opinion of the alternatives. Mr. Strand responded that as an organization they would highly support Alternative #2. There were no further questions.

Ms. Patjens announced the second rule, **WAC 230-04-203**, deals with the fees for the commercial operators and would be 2.79 percent across the board. **Chair Orr** called for public input. There was none.

Ms. Patjens reported that **WAC 230-04-204** deals with the fees for the individuals; for example, the card room employees and the Bingo managers. The reason for two alternatives is to stay consistent. **Chair Orr** called for questions and comments. There were none.

Ms. Patjens reported that **WAC 230-08-017** relates to the control of gambling equipment -- for example putting an ID stamp on the tables, or when a commercial card room wants to use the electronic facsimile of cards there would be \$350 ID stamp. She explained the purpose of ID stamps is to help staff track different equipment; if we have a problem with a specific set of pull-tabs games, then you would be able to go back and easily figure out which distributor and which manufacturer handle those games. **Senator Winsley** asked if there were that many ongoing costs after the initial costs. **Ms. Patjens** indicated there would be with the electronic facsimiles of cards. Staff will have to conduct regular monitoring to make sure that the game is in compliance upon installation and still in compliance as time goes by. It's very similar as a parallel to the way the agency regulates the tribal lottery system. **Ms. Cass-Healy** added there would also be some additional lab costs and some startup costs for the particular tables.

Commissioner McLaughlin questioned the cumulative impact of raising license fees. **Ms. Patjens** explained that if the Commission chose not to raise the fee for the nonprofits now, and next year a decision is made to increase their fees, the agency can never retrieve the 2.79 percent (or whatever appropriate fiscal growth factor figure) for the year the fee wasn't increased. **Mr. Berg** affirmed that over a ten-year period, not raising the fee just this one this time would cost \$1 million because it forever adjusts the base line figure. That's why it becomes significant when you look at the out years.

Steve Strand, Big Brothers/Big Sisters of King and Pierce Counties, said that that cumulative million dollars in their particular case would be monies that would be dealt back into their communities through their services as opposed to the services provided by the Gambling Commission staff. **Chair Orr** called for any additional public comments and there were none.

5. Other Business/General Discussion/ Comments from the Public:

Gary Hanson, Executive Director, Council on Problem Gambling, announced the Council on Problem Gambling would be holding two events in coordination with the November 14th meeting of the Gambling Commission: a discussion workshop from 8:30 a.m. to 10:30 a.m. on November 14th, to discuss the issue of self-banning for problem gamblers, which has become a bigger issue in the gambling industry. The Council would like to get a discussion group to address what the problems are and how they should approach them in the future. Staff from the Commission, the various industry, the tribes, the nonprofits and the card rooms are invited and encouraged to attend. The second event is the first ever Council Awards Dinner to recognize people in the industry that have helped the Council in various ways. More information on the specifics will be forthcoming.

Commissioner McLaughlin reported that last month she attended a Gamblers Anonymous meeting and she felt that if at all possible, all gambling staff and commissioners should attend at least one meeting. She said it was enlightening. **Mr. Hanson** believed that is a good idea; however, the Council is not part of Gamblers Anonymous. He cautioned that anyone interested in attending needed to make sure they were attending an open meeting. **Mr. Hanson** recommended calling the local office in the area of interest and asking if they have an open meeting.

Senator Prentice reported on the two Gambling Round Table events the Legislature conducted. The first was in LaCenter and the second event was held in Spokane. Senator Prentice explained the intent of the hearings is for the legislators to actually to come into an area and see what's actually happening in real life. The opponents of the proposed gambling facility in Washougal turned out in force at the LaCenter hearing, the event was well attended and, in fact, she continues to hear from them. In Spokane, they had a panel of eight people who were very well prepared and did a good job covering both sides of the gambling issues. There was also an excellent presentation on Bingo. The October hearing will be conducted in Pasco and the November meeting will be held in Bellingham.

Senator Prentice said it is very clear, although they're not quite saying so, that the people involved in horse racing are really interested in establishing a casino; they've seen that's saved the industry in other states and she emphasized this is

one of these things the Commission needs to keep an eye on. She reported that a hearing was held in King County that would have raised their taxes in the four King County card rooms to 20 percent. Senator Prentice reported that she lives in unincorporated King County, and knows they're going to have to slash their budgets which may wipe out the policy protection. She advised that she has said if King County lost the casinos because they would not be able to afford to operate, it has the potential of inviting gang activity. She believes that the card rooms haven't had these kinds of problems because of their security and the fact that they keep it very tight. She affirmed this is one of the issues they keep asking everywhere they go -- has the community felt a negative impact? When law enforcement responds, they make it clear that they either have seen no impact, or things have improved. Senator Prentice expressed appreciation for the attendance at the events and she affirmed everyone is continuing to learn as much as they can.

Chair Orr called for any other comments, there were none.

14. Adjournment

With no further business, **Chair Orr** adjourned the meeting at 10:40 a.m. and announced the next meeting would take place in Tacoma on November 14th and 15th.

Minutes submitted to the Commission for approval by:

Shirley Corbett
Executive Assistant